IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2262 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAVID ALIAS JAVLO ALLARAKHA MAYOTHI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS SUBHADRA G PATEL for Petitioner(s) : 1,
MR LR POOJARI, AGP for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/06/2007

ORAL JUDGMENT

Learned AGP Shri Poojari places on record the affidavit in reply.

2. In the present petition, the petitioner has challenged the order of detention dated 26.12.2006 passed by the Commissioner of Police, Rajkot City placing the petitioner under detention in exercise of powers under section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (“PASA” for short).

3. The Detaining Authority was of the opinion that the detention of the petitioner is necessary to prevent breach of public order. To form such an opinion, the detaining placed reliance on the involvement of the petitioner in five cases of breach of Bombay Prohibition Act. It is on the basis of involvement of the petitioner in the said criminal activity and material collected by the Investigating agency while inquiring into these offences, the detaining authority formed an opinion that detention of the petitioner is necessary to prevent breach of public order.

4. Learned advocate for the petitioner submitted that the petitioner has been involved in certain offence of breach of prohibition law, that by itself would not permit the detaining to form an opinion that the activities of the petitioner amount to breach of public order or that to prevent such breach, it is necessary to place the petitioner under detention.

5. on the other hand, learned AGP Shri Poojari

opposed the petition and submitted that the petitioner is found to have been involved in such similar illegal activities on numerous occasions, order of detention should therefore be upheld.

6. Having heard the learned advocates appearing for the parties, short question is whether the opinion formed by the detaining authority is sustainable. It may be that the petitioner is found to have been involved in certain offence of breach of prohibition law, the question is whether there was sufficient material before the detaining authority to form an opinion that his activities are a threat to the public order.

7. Similar question came up for consideration before this Court in Special Civil Application No.5557/06 decided on 26.4.2007 in which following observations were made:

> "5.1.Reliance in this regard was placed on the decision in the case of **Ashokbhai Jivraj @Jivabhai Solanki v. Police Commissioner, Surat & Ors. reported in 2000(1) GLH 393**, wherein the Division Bench placing reliance on an earlier Division Bench decision of this Court in the case of Shamjibhai Manjibhai Patel v. Commissioner of Police, City of Ahmedabad and Anr reported in 1992(2) GLR 1360, observed that cases against the detenu have already been registered and the case would fall under the maintenance of "law and order and not public order". The Division Bench, therefore, opined

that the subjective satisfaction arrived at by the detaining authority was illegal since the detention could have been passed by the authority for maintenance of public order. On this basis, the Division Bench was pleased to quash the order of detention.

5.2. Reliance was placed on the decision of **Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and Anr. reported in AIR 1989 SCC 491,** wherein the Apex Court observed that, may be that the detenu is a bootlegger but only on that count he could not be preventively detained unless his activities affect adversely or is likely to affect adversely the maintenance of public order. In the said case, it was alleged that not only the detenu was a bootlegger, he was indulging in use of force and violence, he was involved in illegal sale of liquor and created an atmosphere of fear and terror by beating innocent citizens. The Apex Court observed that apart from some minor incidents of beating by the detenu the witnesses alleged that the detenu was high handed and fierce by nature. It was held that the detention order cannot be upheld as this would not be a case of adversely affecting public order.

5.3. Reliance was also placed on the decision of the learned Single Judge of this Court in the case of **Rajubhai Pratapbhai Panpatil vs. Commissioner of Police, Surat City and Ors. reported in 2006(1) G.L.H. 382**, wherein the learned Judge found that mere registration of prohibition offence is not enough to arrive at the subjective satisfaction that the activities of the detenu are prejudicial to maintenance of public

order.

5.4. Reliance was placed on the decision of the Apex Court in the case of **District Collector, Ananthapur and Anr. v. V.Laxmanna reported in (2005) 3 SCCC 663**, wherein the Apex Court observed that mere dealing with arrack or transport or sale thereof by itself would not become an activity prejudicial to the maintenance of pubic order and before ordering detention the authority must be satisfied on material available to it that the arrack dealt with by the detenu is dangerous to public health.

7. Having heard learned advocates for the parties, I find that the contention raised by the learned advocate for the petitioner is required to be upheld. In the present case except for six cases of bootlegging filed against the petitioner there is no further material permitting the detaining authority to come to the conclusion that her activities were prejudicial to the interest of public order. As noted earlier three out of these six cases were filed in the year 2005, whereas the order of detention was passed in the December, 2006. Quite apart from the time gap in taking into consideration the stale cases, I find that as observed by the Division Bench of this Court in the case of **Ashokbhai Jivraj @Jivabhai Solanki v. Police Commissioner, Surat & Ors (supra)** mere involvement of a detenu in activities of bootlegging *per se* would not permit the authority to come to a conclusion that her activities were prejudicial to the public order. This view has also been followed subsequently and is also supported by the decision of the Apex Court in the case of **Piyush Kantilal**

Mehta v. Commissioner of Police, Ahmedabad City and Anr.(supra).”

8. In view of the above legal position, the opinion of the detaining authority that the detention of the petitioner is necessary to prevent breach of public order cannot be sustained.

9. Under the circumstances, the impugned order of detention dated 26.12.2006 is quashed. Since the order of detention is quashed, the detenu shall be released forthwith unless involved in any other criminal case or detention. With these directions, the petition is disposed of. Rule is made absolute accordingly.

Direct service is permitted.

[AKIL KURESHI, J.]

(vjn)